

James R. Rogers/SBN 99102  
[jrogers@jrllaw.net](mailto:jrogers@jrllaw.net)  
Jason Sparta/SBN 228458  
[jsparta@jrllaw.net](mailto:jsparta@jrllaw.net)  
LAW OFFICES OF JAMES R. ROGERS  
125 S. Highway 101, Suite 101  
Solana Beach, CA 92075  
Telephone: 858-792-9900  
Facsimile: 858-792-9509

Attorneys for Defendants  
EDUCATIONAL COMMISSION FOR  
FOREIGN MEDICAL GRADUATES,  
Erroneously sued as  
EDUCATION COMMISSION FOR  
FOREIGN MEDICAL GRADUATES,  
and  
FOUNDATION FOR ADVANCEMENT OF  
INTERNATIONAL MEDICAL EDUCATION  
AND RESEARCH

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ST.LUKE SCHOOL OF MEDICINE, et al.	)	Case No. CV-10-1791RGK (SHx)
	)	
Plaintiff(s)	)	DEFENDANTS' MOTION TO
	)	DISMISS PLAINTIFFS' FIRST
v.	)	AMENDED COMPLAINT FOR
	)	LACK OF SUBJECT MATTER
	)	JURISDICTION AND FOR FAILURE
	)	TO STATE A CLAIM
REPUBLIC OF LIBERIA, et al.	)	
	)	[F.R.C.P. 12(b)(1) & 12(b)(6)]
Defendants.	)	
	)	
	)	Date: June 14, 2010
	)	Time: 9:00 a.m.
	)	Courtroom: 850
	)	
	)	

Defendants EDUCATIONAL COMMISSION FOR FOREIGN MEDICAL  
GRADUATES erroneously sued as EDUCATION COMMISSION FOR

FOREIGN MEDICAL GRADUATES (“ECFMG”) and FOUNDATION FOR  
 ADVANCEMENT OF INTERNATIONAL MEDICAL EDUCATION AND  
 RESEARCH (“FAIMER”) submit the following memorandum of points and  
 authorities in support of their motion to dismiss for lack of subject matter  
 jurisdiction pursuant to Federal Rules of Civil Procedure section 12(b)(1) and for  
 failure to state a claim pursuant to Federal Rules of Civil Procedure section  
 12(b)(6).

## I.

### **ARGUMENTS RE SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CLAIM**

Plaintiffs allege subject matter jurisdiction pursuant to the Treaty of  
 Friendship, Commerce and Navigation, 54 Stat. 1739 T.S. #956. At page 2,  
 paragraph 3 of plaintiffs’ complaint, plaintiffs acknowledge that in order to confer  
 jurisdiction upon this Court pursuant to the Friendship Treaty, it must “conform” to  
 the “local laws” to which the residents of the State of California must “conform”  
 before bringing suit in United States courts. *Argentine Republic v. Amerada Hess  
 Shipping Corp., et al.*, (1989) 488 U.S. 428, 443; 109 S.Ct. 683, holding that the  
 Foreign Sovereign Immunity Act “is clearly one of the ‘local laws’ to which  
 respondents must ‘conform’ before bringing suit in United States courts.” As  
 more fully set forth below, plaintiffs have not conformed to the local laws and  
 therefore cannot bring the subject suit in United States courts.

The subject complaint is captioned as a class action seeking recovery on  
 various theories. These theories listed below are the ones alleged in the body of  
 the complaint commencing page 59, line 22 through page 69, line 17.

1. Trade libel;
2. Intentional Interference with Prospective Business Advantage;
3. False Imprisonment;
4. Negligence;

5. Loss of Consortium;
6. Conversion;
7. Due Process;
8. Equal Protection;
9. Conspiracy of Commit Civil Rights Violations;
10. Intentional infliction of emotional distress;
11. Negligent infliction of emotional distress;

## II.

### **BRIEF FACTUAL SUMMARY RELATING TO MOVING PARTY**

Plaintiffs allege in paragraph 3 that the Education Commission for Foreign Medical Graduates (“ECFMG”) administers the United States medical licensing examination to graduates of foreign medical education institutions. It also alleges ECFMG qualifies foreign medical graduates for medical residency in the United States by issuing an ECFMG certificate based upon successful completion of the USMLE Step 1 and 2.

Foundation for Advancement of International Education and Research (“FAINER”) is alleged to be an ECFMG agency that maintains “the International Medical Education Directory ‘IMED’”. The IMED is currently the sole source for listing qualified foreign medical students in the United States. The introduction commencing on page 8, paragraph 25 summarizes the factual foundation of each and every claim alleged by plaintiff. It states the following:

In 2005, organized conspirators and government officials, who are angered because St. Luke School of Medicine (‘SLSOM’) refused to pay bribes, attacked SLSOM in the media and internet. When Dr. Dolphin refused to pay the bribe demands, the same public officials began making false public statements to the media, and sending letters with

1 false statements worldwide to principal agencies  
 2 involved in the recognition listing of medical  
 3 degrees and medical licenses.”

4 The allegations relating to ECFMG or FAINER first begin at page 32. Up to  
 5 that point, the allegations are more like a diary of the interactions between plaintiff  
 6 Dolphin and the various Liberian governmental agencies. In short, plaintiffs claim  
 7 that because he refused to pay a bribe to certain officials at the National  
 8 Commission on Higher Education (a Liberian agency), this agency issued a letter  
 9 dated April 11, 2005 which stated SLSOM “does not exist” and was a “computer  
 10 school”. It is alleged upon receipt of the letter ECFMG, without corroboration of  
 11 the evidence or claim stated in the letter, immediately withdrew SLSOM from the  
 12 IMED and cancelled the USMLE tests results for all of its students and graduates  
 13 past and present. [It should be noted that on March 12, 2005 (Exhibit 13 to the  
 14 complaint) the Liberian National Commission on Higher Education responded to a  
 15 letter from ECFMG. This letter was in response to a January 11, 2005 letter that  
 16 makes reference to four questions posed to Liberian Commission. These were the  
 17 same questions posed to the Liberian Commission on January 26, 2006 which  
 18 never resulted in any response from the Liberian Commission.

19 In paragraph 161 it is alleged that on October 3, 2005 the National  
 20 Commission on Higher Education for Liberia sent a letter to ECFMG stating as  
 21 follows:

22 Based upon the ruling of the Supreme Court of the  
 23 Republic of Liberia regarding St. Luke School of  
 24 Medicine, the court has ordered the medical school  
 25 reinstated to its previous status it was during the  
 26 accreditation process. Abiding by the Supreme  
 27 Court order, the National Commission of Higher  
 28 Education hereby revokes the letter of April 11,

1                   2005 (paragraph 12), which denied the existence of  
 2                   St. Luke School of Medicine and further advises  
 3                   that it should continue its existence . . . . We also  
 4                   request that the St. Luke School of Medicine be  
 5                   included in the International Medical Education  
 6                   Directory as it was previously.” [This is attached  
 7                   as Exhibit 18.]

8                   Plaintiffs allege that ECFMG completely disregarded the NCHE letter.  
 9                   SLSOM was not listed on the IMED as it was previously and has not been sent.

10                   On January 26, 2006 ECFMG sent a letter to Dr. Isaac Roland at the  
 11                   Liberian National Commission of Higher Education making the following  
 12                   inquiries:

13                   2. What is the status of the medical degrees  
 14                   awarded by St. Luke School of Medicine for the  
 15                   years 2000-2005; are holders of degrees issued  
 16                   during those years recognized as physicians by the  
 17                   government of Liberia, and are they eligible to  
 18                   apply for medical licensure in Liberia.

19                   3. Are graduates of St. Luke School of Medicine  
 20                   who received their medical degrees beginning  
 21                   January 2006 eligible for medical license in  
 22                   Liberia? If so, as of what date are (or will) these  
 23                   graduates be eligible for medical licensure in  
 24                   Liberia?

25                   4. Please confirm that instruction has begun at the  
 26                   campus of St. Luke School of Medicine in Gaye  
 27                   Town, Monrovia on the date of which the  
 28                   instruction began.

1 Plaintiffs allege in paragraph 167 that the Liberian National Commission of  
2 Higher Education never responded to ECFMG's January 26, 2006 letter.

### 3 **III.**

#### 4 **NO FACTS ALLEGED AGAINST MOVING PARTY TO SUPPORT** 5 **ANY OF THE CLAIMS FOR RELIEF ASSERTED BY PLAINTIFF**

#### 6 **A.**

##### 7 ***Trade Libel***

8 Commencing at page 59, paragraph 193 plaintiffs allege their "trade libel"  
9 claim. However, none of the allegations relating to trade libel have anything to do  
10 with ECFMG or FAIMER. While plaintiffs do allege at paragraphs 196 and 197 of  
11 the complaint plaintiffs allege that "defendants made public statements" and  
12 "defendants made false statements", nowhere is it alleged that ECFMG or  
13 FAIMER made any such statements.

14 In any event, even assuming plaintiffs adequately allege facts to support a  
15 claim within this cause of action, it is time barred pursuant the one year statute of  
16 limitations provided by California Code of Civil Procedure section 340(c).

#### 17 **B.**

##### 18 ***Intentional Interference with Prospective*** 19 ***Economic Business Advantage***

20 At page 65, paragraph 199 plaintiffs allege the cause of action for intentional  
21 interference with a prospective business advantage. It is alleged that "defendants,  
22 and each of them, were aware of SLSOM's economic relationship with the  
23 Republic of Liberia, ECFMG, potential medical students worldwide and World  
24 Health Organization, by virtue of enabling documents. Then plaintiffs allege that  
25 "defendants false public statements were designed to disrupt SLSOM's worldwide  
26 economic relationship. Plaintiffs further allege that "defendants false public  
27 statements cause ECFMG to permanently remove SLSOM from the IMED, even  
28 after a Liberian Supreme Court order and several subsequent NCHE letters

1 requested that SLSOM be reinstated. As a consequence of SLSOM's removal  
 2 from the IMED, medical students lost jobs, residencies and positions.  
 3 Additionally, medical students had legitimately earned licenses revoked and  
 4 properly earned degrees invalidated, as set forth in Exhibit 1."

5 This claim for relief is premised upon false public statements. Again, there  
 6 are no allegations that ECFMG or FAIMER made any false statements about  
 7 plaintiffs.

8 In any event, even assuming plaintiffs adequately allege facts to support a  
 9 claim within this cause of action, it is time barred pursuant to the two-year statute  
 10 of limitations provided by California Code of Civil Procedure section 339(1).

### 11 *C.*

#### 12 *False Imprisonment*

13 Page 66 alleges false imprisonment in paragraph 201. This clearly has  
 14 nothing to do with ECFMG or FAIMER, however, plaintiffs allege "defendants,  
 15 without lawful privilege, confined Dr. Dolphin against his will by preventing him  
 16 from travelling freely as set forth in paragraph 80 through 85."

17 In any event, even assuming plaintiffs adequately allege facts to support a  
 18 claim within this cause of action, it is time barred pursuant to the one year statute  
 19 of limitation provided by California Code of Civil Procedure section 340(c).

### 20 *D.*

#### 21 *Negligence*

22 Plaintiffs allege a general negligence theory in paragraph 202. They allege  
 23 "defendants owed a duty to plaintiffs to insure that plaintiffs not be deprived of  
 24 life, liberty, or property without due process of law." They further allege that  
 25 "defendants, by failing to present any meaningful evidence to support the  
 26 accusation against plaintiffs, breached its duty to provide plaintiff with due process  
 27 of law. Defendants breach caused SLSOM to be removed from IMED, effectively  
 28 nullifying medical student's degrees and medical licensing examination scores. [It



1 should be noted that the due process referred to here is the due process exercised in  
2 Liberia, not the United States.]

3 Simply put, ECFMG and FAIMER, both non-profit corporations, cannot  
4 negligently deprive plaintiffs of their due process rights. Indeed, the alleged due  
5 process violations alleged in the complaint arise out of the Liberian governments  
6 conduct, not ECFMG or FAIMER.

7 In any event, even assuming plaintiffs adequately allege facts to support a  
8 claim within this cause of action, it is time barred pursuant to the two year statute  
9 of limitations provided by California Code of Civil Procedure section 335.1.

10 *E.*

11 *Loss of Consortium*

12 Plaintiff claims loss of consortium. He claims that all the defendants trade  
13 libel and negligence caused plaintiff's wife to leave him.

14 A loss of consortium claim is not a direct claim, it is a derivative one  
15 brought by the victims spouse. Thus, even assuming this is a legally viable claim it  
16 is one that could be brought by Dr. Dolphin's wife, not Dr. Dolphin.

17 In any event, even assuming plaintiffs adequately allege facts to support a  
18 claim within this cause of action, it is time barred pursuant to the two year statute  
19 of limitations provided by California Code of Civil Procedure section 335.1.

20 *F.*

21 *Conversion*

22 Paragraph 205 alleges conversion. Plaintiff alleges that their property shall  
23 not be taken without due process of law and without payment or just  
24 compensation. They further allege that the nationals of each high contracted party  
25 shall receive within the territories of the other upon submitting to conditions  
26 imposed upon the nationals the most constant protection and security for their  
27 personal property. Then plaintiffs allege that defendants through its arbitrary  
28 hearings and decision making effectively converted plaintiffs' property.



There are no allegations, nor can there be, that ECFMG and FAIMER, both non-profit corporations, have deprived plaintiffs of their due process rights and as a result somehow converted property. Indeed, the alleged due process violations alleged in the complaint arise out of the Liberian governments conduct, not ECFMG or FAIMER.

In any event, even assuming plaintiffs adequately allege facts to support a claim within this cause of action, it is time barred pursuant to the three year statute of limitations provided by California Code of Civil Procedure section 338(c).

***G.***

### *Due Process Violation*

Plaintiff alleges due process as a count/cause of action. He alleges that no person shall be deprived of life, liberty or property without due process of law. Then quotes that each high contracting party “shall receive within the territories of the other upon submitting to conditions imposed upon its nationals the most constant protection and security for their person and property.”

The crux of the alleged due process violation, as alleged by plaintiffs, is contained in paragraph 208 wherein it is stated – “Defendants, by failing to present at any hearing any meaningful evidence to support their accusations against plaintiffs before illegally dismantling SLSOM, breached its duty to provide Plaintiffs with due process of law, and treated Plaintiffs differently than A.M. Dogliotti, a similarly situated medical school that suffered none of the harms to which SLSOM was subjected. Defendants’ breach caused SLSOM to be removed from IMED . . . .”

Thus, the alleged due process violations arise out of actions taken by certain governmental officials in Liberia. Thus, there are no allegations, nor can there be, that ECFMG and FAIMER, both non-profit corporations, have deprived plaintiffs of their due process rights and as a result somehow converted property.

1 ***H.***

2 ***Violation of Equal Protection***

3 Paragraph 208 (note there are two paragraphs numbered 208) alleges equal  
4 protection violations. It alleges that “no state shall . . . deny to any person within  
5 its jurisdiction equal protection of laws.” Then plaintiff cites to the friendship  
6 treaty stating “the nationals of high contracting party shall receive within the  
7 territories of the other, upon submitting to particular conditions imposed upon its  
8 nationals.”

9 Essentially, this claim for relief alleges the same conduct supporting  
10 plaintiffs due process allegations and are therefore equally defecieint.

11 ***I.***

12 ***Conspiracy to Violate Civil Rights***

13 Page 68, paragraph 209 alleges conspiracy to commit civil rights violations.  
14 It is alleged that “defendant Dr. Isaac Roland, Mohammed Sheriff, Dr. Evelyn  
15 Kondakaie, Dr. Horatius Browne and Dr. Benson Barh each conspired with one  
16 another to denigrate SLSOM’s reputation in an effort to secure bribes. Then  
17 plaintiff alleges that “all defendants were aware of SLSOM’s legitimate status and  
18 sought to discredit SLSOM to secure monthly bribes.

19 Again, the conduct supporting this legal theory is directed at the Liberian  
20 officials and/or government, not ECFMG of FAIMER.

21 ***J.***

22 ***Intentional Infliction of Emotional Distress***

23 Paragraph 210 sets forth plaintiffs’ intentional infliction of emotional  
24 distress theory. This essentially incorporated the prior allegations. Plaintiffs allege  
25 that “defendants intentionally took Dr. Dolphin’s passport and prevented him from  
26 travelling on two separate occasions to visit his wife and family.”

27 Little need be said other than there are no allegations against ECFMG or  
28 FAIMER supporting such claim for relief.

1 In any event, even assuming plaintiffs adequately allege facts to support a  
 2 claim within this cause of action, it is time barred pursuant to a statute of  
 3 limitations no longer than the 2-year statute of limitations provided by California  
 4 Code of Civil Procedure section 335.1.

5 **K.**

6 ***Negligent Infliction of Emotional Distress***

7 At page 69, paragraph 211, plaintiffs allege their claim for negligent  
 8 infliction of emotional distress. This is essentially the same allegation for the  
 9 intentional infliction and is equally legally and factually deficient.

10 In any event, even assuming plaintiffs adequately allege facts to support a  
 11 claim within this cause of action, it is time barred pursuant to the two year statute  
 12 of limitations provided by California Code of Civil Procedure section 335.1.

13 **IV.**

14 **CONCLUSION**

15 For the foregoing reasons, defendants ECFMG and FAIMER move this  
 16 Court for an order dismissing this case pursuant to F.R.C.P. 12(b)(1) for lack of  
 17 subject matter jurisdiction and pursuant to F.R.C.P. 12(b)(6) for plaintiffs' failure  
 18 to state a claim.

19 Dated: May 12, 2010

LAW OFFICES OF JAMES R. ROGERS

20  
 21 *James R. Rogers*

22 By: \_\_\_\_\_

James R. Rogers, Esq.

Attorneys for Defendants

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